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Carlton Oaks Golf Club

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Destinee Hart, an individual, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

v.

ALIKA LLC dba Carlton Oaks Golf Club, a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00025651-CU-OE-CTL

CLASS ACTION

Assigned to the Hon. Joel R. Wohlfeil
(Dept. C-73)

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT**

Complaint Filed: June 11, 2021
FAC Filed: August 19, 2021
Trial Date: Not Set

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation and Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made and entered into by and among Plaintiff Destinee Hart (hereinafter the “Plaintiff”), individually and on behalf of the Settlement Class, as defined herein, and Defendant ALIKA LLC *dba* Carlton Oaks Golf Club (hereinafter the “Defendant” or “Alika”). Plaintiff and Defendant are jointly referred to in this Settlement Agreement as the “Parties,” and each of them as a “Party.”

1. **DEFINITIONS**

1.1 The term “**Agreement**” means this Settlement Agreement.

1.2 The term “**Attorneys’ Fees and Costs**” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel, subject to Court approval, in accordance with Subsection 4.4 of this Agreement, and includes all such fees, costs, expenses incurred as of the date this Settlement Agreement is executed, as well as such fees, costs, expenses incurred in documenting the Settlement, securing approval of the Settlement, administering and obtaining a judgment in the Action before the Court. Attorneys’ Fees and Costs shall be paid from the Class Settlement Amount.

1.3 The term “**Claimant**” and “**Settlement Class Member**” means any Class Member who does not opt-out of the Settlement.

1.4 The term “**Claims Administrator**” means Phoenix Settlement Administrators (hereinafter “PSA”), the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among other things: (i) translating the Notice into Spanish; (ii) mailing the Notice in English and Spanish to Class Members; (iii) performing an NCOA search and skip-tracing; (iv) tracking and addressing Opt-Out Letters, Objections, and workweek disputes/LC 203 subclass eligibility; (v) notifying the Parties regarding submitted Opt-Out Letters, Objections, and workweek count/LC 203 subclass eligibility disputes consistent with this Agreement; (vi) issuing payments consistent with this Agreement; and, (vii) determining any appropriate tax withholdings from the wage portion of payments to Settlement Class Members, making the appropriate payments based on withholdings and

the employer's share of payroll taxes, and issuing any required tax paperwork.

1.5 The term “**Claims Period**” means the thirty (30) day time-period for Settlement Class members to submit an Opt-Out Letter, an Objection to the Settlement, or to dispute the workweeks/LC 203 subclass eligibility listed on the Class Notice.

1.6 The term “**Claims Deadline**” is the last day of the Claims Period.

1.7 The term “**Complaint**” or “**Operative Complaint**” means the First Amended Complaint (“FAC”) filed on August 19, 2021, styled as *Destinee Hart v. ALIKA LLC dba Carlton Oaks Golf Club* (Case No. 37-2021-00025651-CU-OE-CTL) in the Superior Court of the State of California, County of San Diego.

1.8 The term “**Class Counsel**” means the following counsel who, subject to Court approval, shall act as counsel for the Settlement Class: Dychter Law Offices, APC.

1.9 The term “**Class**” or “**Class Member**” means all current and former non-exempt hourly employees of Defendant Aliko LLC dba Carlton Oaks Golf Club at any time since June 11, 2017 through August 31, 2022.

a. “**LC 203 subclass**” means Class Members who separated their employment from Defendant at any time between June 11, 2018 through August 31, 2022.

1.10 The term “**Class Settlement Amount**” means the gross sum of Three Hundred and Ten Thousand One Hundred and Five Dollars and Seventy-Eight Cents (\$310,105.78), which, in addition the employer's share of corporate payroll tax obligation set forth herein, shall be the maximum sum paid by Defendant to settle this Litigation. The Class Settlement Amount includes, without limitation, the combined total of any Attorneys' Fees and Costs approved by the Court, any Service Enhancement approved by the Court to the named Plaintiff, any Settlement Administration Costs approved by the Court, any payment to the State of California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Private Attorneys General Act (“PAGA”), and all amounts paid to Settlement Class Members shall all come out of the Class Settlement Amount and shall not exceed the Class Settlement Amount. The corporate payroll tax obligation on the “wage” portion of

the settlement to Settlement Class Members shall be paid by Defendant *separate and apart* from the Class Settlement Amount and is not included in the Class Settlement Amount.

1.11 The term “**Court**” means the Superior Court of the State of California, County of San Diego, and any appellate court which may review any orders entered by the Court related to this Settlement.

1.12 The term “**Execution**” refers to the signing of this Agreement by all signatories hereto.

1.13 The term “**Final Judgment**” refers to the final judgment entered by the Court.

1.14 “**Final Approval Hearing**” means a hearing for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement, including but not limited to with respect to allocations for attorneys’ fees and costs, pursuant to class action procedures and requirements; (ii) determining the good faith of the Settlement Agreement; and (iii) entering Judgment. This hearing is intended to be the final approval hearing required under California Rule of Court 3.769(a).

1.15 The term “**Litigation**” means *Destinee Hart v. ALIKA LLC dba Carlton Oaks Golf Club* (Case No. 37-2021-00025651-CU-OE-CTL) which is pending in the Superior Court of the State of California, County of San Diego.

1.16 The term “**Named Plaintiff**” means the named plaintiff in the Litigation, Ms. Destinee Hart. The Named Plaintiff will seek to be designated as Settlement Class Representative for the Settlement Class.

1.17 The term “**Net Settlement Amount**” means the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court, the amount for settlement administration costs approved by the Court, the Service Enhancement approved by the Court, and the payment to the LWDA, pursuant to the PAGA, and any other costs of any kind associated with the settlement with the exception of the employer’s share of corporate payroll tax. The employer’s share of corporate payroll tax obligations on the “wage” portion of the settlement to the Settlement Class Members shall be paid *separate and apart* by Defendant. In the event that the Court reduces the Attorneys’ Fees and Costs, expenses, Service Enhancement, or either increases or decreases the amount allocated to

PAGA penalties, the Net Settlement Amount shall be adjusted accordingly and allocated to Settlement Class Members.

1.18 The term “**Notice**” means a document which has been mutually agreed to by the Parties and subject to the Court’s approval and which the Claims Administrator will mail to each Settlement Class Member, in both English and Spanish, explaining the terms of the Settlement, identifying their respective weeks worked during the Class Period, their eligibility status regarding being an LC 203 Subclass Class Member, their estimated share of the Net Settlement Amount, the opt-out procedure, the objection procedure, and the procedure related to disputing the stated number of eligible work weeks/LC 203 Subclass eligibility during the Class Period.

1.19 The term “**Notice and Administration Costs**” or “**Settlement Administration Costs**” means all costs incurred by the Claims Administrator, including but not limited to the cost to: compare the class list against the National Change of Address (“NCOA”) database maintained by the United States Postal Service; typeset, translate into Spanish, print, and mail the Notice to all Class Members in both English and Spanish; perform skip-tracing of returned mailings; calculating, tabulating, and mailing out payments to Class Members; payment of postage required to comply with this Agreement; responding to Class Member inquiries and addressing any challenges to the stated number of workweeks or LC 203 Subclass status; and all other expenses, including tax reporting and fees to be paid by the Claims Administrator, necessary to administer the Settlement in accordance with this Agreement. Settlement Administration Costs shall not exceed \$10,000. Settlement Administration Costs shall be paid from the Class Settlement Amount.

1.20 The term “**Opt-Out Letter**” refers to a written request to “opt-out” or “exclude” oneself from the Settlement sent by any Class Member who elects to be excluded from the Settlement Class. A Class Member must submit a valid opt-out letter to the Claims Administrator to exclude himself or herself from the Settlement and from the release of claims pursuant to this Settlement. Those who submit a valid and timely Opt-Out Letter will not be considered part of the Settlement Class after their valid and timely Opt-Out

Letter is received by the Claims Administrator and will have no standing to object to the Settlement. Those who submit a valid and timely Opt-Out Letter shall still be bound by the release of PAGA claims, as set forth herein.

1.21 “**Order Granting Final Approval of Class Action Settlement**” shall mean the order and judgment to be entered by the Court titled “Order Granting Motion for Final Approval of Class Action Settlement” and “Judgment.” The “Judgment,” shall constitute approval pursuant to California Rule of Court 3.769(a).

1.22 The term “**Parties**” means the Named Plaintiff and Defendant.

1.23 The term “**PAGA**” means the California Labor Code Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*).

1.24 The term “**Released Claims**” has the definition provided in ¶ 7.1, below.

1.25 The term “**Service Enhancement**” means the amount of money to be requested by Class Counsel on behalf of Named Plaintiff Destinee Hart, subject to Court approval, to compensate Named Plaintiff for the efforts and risks she undertook on behalf of the Settlement Class. Any Service Enhancement shall be paid from the Class Settlement Amount.

1.26 The term “**Settlement**” means the compromise and settlement of the Litigation, as contemplated by this Agreement.

1.27 The term “**Settlement Class**” means all Claimants.

1.28 The term “**Settlement Class Period**” means the period of time from June 11, 2017 through August 31, 2022 which is the period of time applicable to the claims being released pursuant to Section 7 hereafter.

1.29 The term “**Settlement Class Representative**” means Destinee Hart, who Class Counsel shall request be appointed by the Court as class representative for purposes of the Settlement Class.

1.30 The term “**Settlement Disbursement Payment**” means the disbursements made by the Claims Administrator to Settlement Class Members, Class Counsel, the Settlement Class Representative, the Claims Administrator, and the LWDA, pursuant to the Settlement, as

specified in Section 6.3, below.

1.31 ***“Final Effective Date”*** or ***“Effective Date”*** means the latest of the following events have occurred (1) the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or (2) any appeal, writ or other appellate proceeding related to the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (3) any appeal, writ or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement. It is further agreed by the Parties that this Settlement will not become effective if Defendant is required to pay more than the Class Settlement Amount (in addition to employer’s share of payroll tax) under any circumstances. It is further agreed by and between the Parties that this Settlement shall not become effective, and Defendant shall not have any obligation (monetary or otherwise) under the terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights of appeal with respect to any objections or the judgment, have been finally exhausted and resolved upholding the terms of this Settlement.

1.32 For purposes of determining the Final Effective Date, the Parties agree that only California Courts have jurisdiction over any such appeals, except for any appellate procedure over which the United States Supreme Court may exercise jurisdiction.

2. **RECITALS**

2.1 On June 11, 2021, Plaintiff Destinee Hart filed suit in the Superior Court of the State of California, County of San Diego, against Defendant ALIKA LLC dba Carlton Oaks Golf Club (Case No. 37-2021-00025651) on behalf of a proposed class of all non-exempt hourly employees working in the State of California at any time since June 11, 2017 through the present date, for multiple wage and hour claims, including but not limited to, failure to pay all straight-time and overtime wages for all work performed; failure to provide compliant duty-free meal breaks; failure to provide compliant duty-free rest

1 periods; failure to reimburse all incurred business expenses; and, derivative claims for the
2 failure to provide accurate itemized wage statements and failure to pay all wages upon
3 separation of employment; and claims under the Business & Professions Code § 17200,
4 *et seq.* (“UCL”). On June 14, 2021, Plaintiff Hart submitted a notice of new claim to the
5 Labor and Workforce Development Agency (“LWDA”) in order to pursue a claim under
6 the Private Attorneys General Act (“PAGA”) based on the same claims. On August 14,
7 2021, after exhausting the administrative requirements under the PAGA, Plaintiff filed a
8 First Amended Complaint (“FAC”) to include her PAGA claim. This case was assigned
9 to the Honorable Joel R. Wohlfeil (Dept. C-73). Counsel for Defendant filed an Answer
10 to the FAC on September 23, 2021. Counsel for both Parties appeared for the initial Case
11 Management Conference before Judge Wohlfeil on November 12, 2021.

12 Plaintiff initiated formal written discovery in October 2021, propounding Special
13 Interrogatories and Requests for Production of Documents. Defendant served responses
14 to the outstanding discovery in January 2022.

15 Thereafter, the parties began discussing private class-wide mediation of this
16 matter and eventually agreed to mediate with Mr. Barry M. Winograd, Esq. Additionally,
17 Defendant agreed to produce specific raw data, documents, and other information
18 requested by Plaintiff that was necessary for a meaningful mediation to occur.

19 On August 30, 2022, after Plaintiff received the necessary data and information
20 and retained the services of a consulting firm to assist in the analysis thereof, the Parties
21 attended mediation before a well-respected and experienced wage and hour class action
22 mediator, Mr. Barry M. Winograd, Esq. After a full-day mediation the Parties were
23 presented with a “Mediators Proposal” which remained “open” for several days and was
24 eventually accepted by the Parties resulting in an “all-in” non-reversionary settlement
25 amount of Three Hundred and Ten Thousand One Hundred and Five Dollars and
26 Seventy-Eight Cents (\$310,105.78), with the corporate payroll tax obligation on the
27 “wage” portion of the Settlement to the Settlement Class Members to be paid separate
28 and apart by Defendant from the Class Settlement Amount.

2.2 Named Plaintiff and her Counsel believe this Litigation is meritorious based on applicable law or an extension thereof. Class Counsel represents that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the claims against Defendant. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Defendant, class certification risk, trial risk, and appellate risk.

2.3 Defendant has also actively investigated the facts surrounding the claims brought by the Plaintiff on behalf of the putative class and has actively and aggressively defended themselves from said claims. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged. Defendant further asserts that they have complied with all applicable provisions of California statutory, regulatory, and common law and had a good faith belief based on existing law that its practices were and are in compliance. Defendant also has denied and continues to deny, *inter alia*, the allegations that the Class Members have suffered damage; that Defendant in any way failed to pay Class Members for all hours worked and at the lawful rate of pay; that Defendant violated any laws regarding compensation; that Defendant failed to timely pay Class Members all wages owed upon termination/resignation or otherwise when due; that Defendant failed to comply with the law with respect to itemized wage statements; that Defendant violated the law regarding meal breaks and rest periods; that Defendant failed to reimburse all incurred business expenses; that Defendant engaged in any unlawful, unfair or fraudulent business practices; that Defendant engaged in any wrongful conduct as alleged in the Litigation; or that Class Members were harmed by the conduct alleged in the Litigation. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission, concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

2.4 The entry of Final Judgment in this Litigation shall resolve all claims that were alleged in

1 the operative FAC filed in the Litigation, or which could have been alleged based upon the
2 facts set forth in the operative FAC, with the exception of any claims which might be
3 retained by Settlement Class Members who exclude themselves from the Settlement. The
4 Parties agree to cooperate and take all steps necessary and appropriate to obtain Preliminary
5 Approval and Final Approval of this Settlement, and to effectuate its terms.

6 2.5 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the
7 body of the Agreement.

8 **3. CERTIFICATION OF SETTLEMENT CLASS**

9 3.1 The Settlement Class shall consist of *all current and former non-exempt hourly employees*
10 *of Alika LLC dba Carlton Oaks Golf Club at any time since June 11, 2017 through August*
11 *31, 2022.*

12 3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
13 is a conditional certification for settlement purposes only, and that if, for any reason, the
14 Court does not grant final approval of the Settlement, or if final approval is not given
15 following the appeal of any order by the Court, or if for any reason the Settlement Effective
16 Date does not occur, the certification of the Settlement Class for settlement purposes shall
17 be deemed null and void without further action by the Court or any of the Parties, each
18 Party shall retain all of their respective rights and shall be returned to their relative legal
19 positions as they existed prior to execution of this Agreement, and neither this Agreement,
20 nor any of its accompanying exhibits or any orders entered by the Court in connection with
21 this Agreement shall be admissible or used for any purpose in this Litigation or any other
22 legal proceeding, except for the enforcement of same.

23 3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class
24 for settlement purposes is in no way an admission by Defendant that class certification is
25 proper in any other wage and hour litigation, or any other litigation, against Defendant.

26 **4. TERMS OF SETTLEMENT**

27 4.1 Subject to the other terms and conditions contained in this Agreement, and in consideration
28 of the contemplated pleadings, releases and dismissals set forth in this Agreement, and

1 subject to Court approval, Defendant agrees that the Class Settlement Amount shall be
2 Three Hundred and Ten Thousand One Hundred and Five Dollars and Seventy-Eight Cents
3 (\$310,105.78).

4 4.1.1 Defendant will provide the Claims Administrator with all names, last known home
5 mailing addresses, social security numbers, and hire and separation dates for each
6 Class Member within ten (10) business days of the Court granting Preliminary
7 Approval of the Settlement, so the Claims Administrator can determine the number
8 of workweeks for each Class Member during the Class Period, as well as their LC
9 203 Subclass eligibility.

10 4.2 Except for those Class Members who opt-out of the Settlement, all Settlement Class
11 Members shall recover a share of the Net Settlement Amount. The Net Settlement Amount
12 shall be allocated as set forth below:

13 4.2.1 Each Settlement Class Member shall be awarded a pro-rata share based
14 upon a percentage equal to the number of each Class Member's weeks
15 worked (rounded up to the next whole number) during the Class Period
16 divided by the total of all Settlement Class Members' weeks worked
17 during the Class Period. Each Settlement Class Member's respective
18 share of the Net Settlement Amount shall be calculated by multiplying the
19 Net Settlement Amount, less all amounts to be paid to the LC 203
20 Subclass, as addressed in Subsection 4.2.2 below, by a fraction, the
21 numerator of which is the individual class member's weeks worked
22 during the Class Period, and the denominator of which is the total of all
23 aggregate weeks worked during the Class Period by all members of the
24 Settlement Class during the Settlement Class Period. The resulting
25 number shall be the amount that each member of the Settlement Class is
26 eligible to receive, notwithstanding any additional amount as a Member
27 of the LC 203 Subclass.

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1 4.2.2 The Parties agree to allocate the sum of Two Hundred and Fifty Dollars
2 (\$250.00) to each Settlement Class Member who is also an LC 203
3 Subclass Member for purposes of California Labor Code Section 203
4 penalties (the “Section 203 Settlement Amount”), which shall be deducted
5 before the Net Settlement Amount is allocated across Settlement Class
6 Members based on the number of weeks worked, in Paragraph 4.2.1. In
7 the event the Court determines that the Section 203 Settlement Amount
8 needs to be modified in some manner, the parties mutually agree to
9 cooperate to make said revision and reallocation within the Net Settlement
10 Amount, without the necessity for a revised Settlement Agreement.

11 4.2.3 The anticipated share of each Class Member who elects to “opt-out” of
12 the Settlement shall be re-distributed on a *pro rata* basis to all
13 participating, Settlement Class Members. Likewise, the anticipated share
14 of each respective LC 203 Subclass Member who elects to “opt-out” of
15 the Settlement shall be returned for inclusion in the Net Settlement
16 Amount and distributed on a *pro rata* basis to all participating Settlement
17 Class Members.

18 4.3 Class Counsel may request, subject to Court approval, that the Settlement Class
19 Representative be paid a maximum Service Enhancement of up to Eight Thousand Dollars
20 (\$8,000.00), which shall be paid from the Class Settlement Amount. This request shall not
21 be opposed by Defendant. In the event the Court does not award the full requested Service
22 Enhancement, the remainder shall be re-distributed on a *pro rata* basis to all participating
23 Settlement Class Members. The Service Enhancement shall be paid to Plaintiff in addition
24 to her *pro rata* share of the Net Settlement.

25 4.4 Class Counsel shall apply to the Court for an award of Attorneys’ Fees and Costs, which
26 shall be paid from the Class Settlement Amount. Defendant will not oppose Class
27 Counsel’s application for an award of Attorneys’ Fees in an amount up to one-third
28 (33.33%) of the Class Settlement Amount comprising One Hundred and Three Thousand

1 Three Hundred and Sixty-Eight Dollars and Fifty-Nine Cents (\$103,368.59), plus Costs
2 not to exceed Eight Thousand Dollars (\$8,000.00). In the event the Court does not award
3 the full requested Attorneys' Fees or Costs, the remainder(s) shall be re-distributed on a
4 *pro rata* basis to all participating Settlement Class Members.

5 4.4.1 The Parties agree that the Court's approval or denial of any request for
6 Attorneys' Fees and Costs or the Named Plaintiff's Service Enhancement
7 are not conditions to this Agreement and are to be considered by the Court
8 separately from the fairness, reasonableness, adequacy, and good faith of
9 the settlement. Any order or proceeding relating to the application by Class
10 Counsel of an award for Attorneys' Fees and Costs or for Service
11 Enhancement shall not operate to terminate or cancel this Agreement, but
12 in no event shall Defendant be required to pay more than the Class
13 Settlement Amount.

14 4.4.2 Class Counsel agree that they are responsible for allocating the Attorneys'
15 Fees and Costs approved by the Court among themselves and any other
16 counsel that may have any other agreement with them. If a lien is asserted,
17 the Claims Administrator will tender the Attorneys' Fees and Cost award to
18 the Court and shall thereafter be released from any claim related to those
19 payments. Class Counsel warrants and represents that there are no liens on
20 the amounts to be paid pursuant to the terms of this Agreement and that no
21 assignments of the claims to be released or the Attorneys' Fees and Costs
22 to be paid pursuant to this Agreement have been made or attempted. Class
23 Counsel agrees to defend, indemnify and hold harmless Defendant from any
24 liability resulting from a breach of these representations and/or any lien or
25 assignment.

26 4.5 The Parties agree that, subject to Court approval, payment to the Claims Administrator
27 shall not exceed Ten Thousand Dollars (\$10,000.00). The Claims Administration Costs
28 shall be paid from the Class Settlement Amount. In the event the Settlement Effective Date

1 does not occur, any portion of the Settlement Administration Costs already incurred by the
2 Claims Administrator shall be allocated so that Class Counsel and Defendant will each be
3 responsible for one-half of said expenses. Any dispute relating to the Claims
4 Administrator's ability and need to perform its duties shall be referred to the Court if it
5 cannot be resolved by the Parties. The Claims Administrator shall regularly and accurately
6 report to the Parties, in written form when requested, on the substance of the work
7 performed. To the extent that the Claims Administrator Costs ultimately exceed
8 \$10,000.00 and are approved by the Court, any additional amount will be deducted from
9 the Class Settlement Amount.

10 4.6 The Parties agree that Claims paid to Claimants shall be correctly and appropriately
11 allocated as follows:

12 4.6.1 The entirety of the Section 203 Settlement Amount shall be allocated to "penalties"
13 and characterized as 1099 income.

14 4.6.2 Of the Net Settlement Amount remaining and to be distributed *pro rata* based on
15 workweeks, $1/3$ shall be allocated to "wages", and $2/3$ shall be allocated to
16 "penalties and interest", such that $1/3$ shall be characterized as W-2 income and $2/3$
17 shall be characterized as 1099 income. Defendant's share of any employer-side
18 payroll taxes allocated to the payment of "wages" will be calculated based on the
19 portion allocated to the payment of "wages" and paid by Defendant separate and
20 apart from the Class Settlement Amount. The Claims Administrator will be
21 responsible for calculating and paying the payroll taxes and withholdings owed,
22 after informing Defendant of the specific amount required to be paid for the
23 corporate payroll tax obligation.

24 4.6.3. Tax Liability. Defendant makes no representation as to the tax treatment or legal
25 effect of the payments called for hereunder, and Settlement Class Representative is
26 not relying on any statement or representation by Defendant in this regard.
27 Settlement Class Representative understands and agrees that Class Members will
28 be solely responsible for the sufficiency of the payment of employee's taxes

predicated on the payments described herein, with the understanding that the Claims Administrator is distributing the payroll tax withholdings and employers' share of the wage portion of the payments, but making any tax payment for the penalties / interest.

4.6.4 Tax Reporting. The Settlement Administrator will be solely responsible for all tax reporting, including issuing to each Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

4.7 The Parties agree to allocate a total of Ten Thousand Dollars (\$10,000.00) towards PAGA penalties. The Claims Administrator shall issue and mail a check to the State of California LWDA in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) (*i.e.* 75% share). The allocated PAGA penalties shall be paid from the Class Settlement Amount. Should the Court at the Preliminary Approval hearing, or the LWDA, deem that additional PAGA penalties need to be allocated, the Parties agree to revise the allocated PAGA penalties amount as deemed necessary without the need for a revised Settlement Agreement, the funds of which shall be paid from the Class Settlement Amount.

4.8 The payments made to Claimants pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement or Agreement.

4.9 Subject to Court Approval, checks issued to Claimants pursuant to this Agreement shall remain negotiable for a period of ninety days (90) days from the date of mailing by the Claims Administrator. Thereafter, the Claims Administrator shall cancel any uncashed checks and the corresponding amount shall be sent in the Claimant's name to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure §§ 1500, *et seq.*, in the name of the Claimant and for the benefit of the Claimant until the Claimant claims his or her property. The Parties agree that this

disposition results in no “unpaid residue or unclaimed or abandoned class member funds” as discussed in California Code of Civil Procedure section 384, subd.(b). The Parties agree and acknowledge that such uncashed funds shall be in a non-interest bearing Qualified Settlement Fund Account created pursuant to Internal Revenue Code Section 1.468B-1 up until the time of disbursement to the Controller of the State of California. No interest will have accrued prior to disbursement because the account has to be a checking account (non-interest bearing) in order to disburse. The Parties understand and agree that because no interest will have accrued on the uncashed funds prior to disbursement there will be no obligation on the part of Defendant, the Claims Administrator, or any other person to pay any interest upon disbursement of the uncashed funds to the Controller of the State of California under California Code of Civil Procedure Section 384.

5. NOTICE OF THE SETTLEMENT

5.1 Within ten (10) business days after the Court grants Preliminary Approval of this Settlement, Defendant shall provide to the Claims Administrator a listing of all Class Members, including the following information/data, in a Microsoft Excel spreadsheet: 1) full name; 2) last known mailing address; 3) telephone number (*if available*); 4) Social Security Number; and 5) dates of employment as a Class Member (including all separations and re-hires during the Class Period); in order for the Claims Administrator to be able to calculate the workweeks (rounded-up to the next whole number) and LC 203 Subclass eligibility and each Settlement Class Member’s respective settlement share (hereinafter the “*Class List*”). The “Class List” shall be based on the data kept in the ordinary course of business in Defendant’s business records. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Claims Administrator, who shall also agree to maintain the confidentiality of the Class List and agree the Class List shall not be used for any purpose other than to administer the Class Settlement.

5.2 Subject to Court approval, the “Notice” shall be sent by the Claims Administrator to all Class Members, in both English and Spanish, by first class mail within seven (7) business

1 days of receipt of the Class List, except that the Notice relating to Named Plaintiff shall be
2 e-mailed to Class Counsel.

3 5.3 Prior to mailing the Notice, the Claims Administrator shall process the Class List against
4 the National Change of Address (“NCOA”) Database maintained by the United States
5 Postal Service (“USPS”). It shall be conclusively presumed that if the Notice is not
6 returned as “undeliverable,” the Settlement Class Member received the Notice Packet.
7 With respect to Notice Packets that are returned as “undeliverable,” if a forwarding address
8 is provided by the USPS, the Claims Administrator shall re-mail the Notice within three
9 (3) business days. If a Notice is “undeliverable” and no forwarding address is provided,
10 the Claims Administrator shall employ a more substantive skip-tracing procedure in order
11 to obtain updated address information and shall re-mail the Notice to those Settlement
12 Class Members for whom a new address is located. All such re-mailing shall occur within
13 five (5) days of the Administrator’s receipt of the returned notice and no later than the last
14 day of the Claims Period. If the Notice is returned after skip-tracing and re-mailing occurs,
15 there shall be no further skip-tracing but the Settlement Class Member shall still be bound
16 by the release set forth in Paragraph 7.1 and all other terms of this Settlement.

17 5.4 It will be conclusively presumed that if an envelope has not been returned within thirty
18 (30) days of the mailing that the Settlement Class Member received the Notice.

19 **6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS**

20 6.1 The Notice shall set a date of thirty (30) calendar days from the original mailing date as
21 the deadline by which members of the Settlement Class may submit their Opt-Out Letter,
22 Objection to the Settlement, or Dispute related to the stated weeks worked during the Class
23 Period and/or LC 203 Subclass eligibility. No opt-out requests or objections will be
24 honored if postmarked after the Claims Deadline. All written Opt-Out Letters shall be sent
25 to the Claims Administrator only. All written Objections shall be sent to the Claims
26 Administrator, Class Counsel, and Defendant’s Counsel. If a claimant mistakenly sends a
27 written Opt-Out Letter to Class Counsel, or to Defendant’s Legal Counsel, the respective
28 party will forward the documents, including the mailing envelope evidencing the postmark

1 date, to the Claims Administrator as soon as possible.

2 6.2 Each Class Member who does not opt-out of the Settlement shall automatically be entitled
3 to their respective share of the Settlement. The amount that each Settlement Class Member
4 is eligible to receive under this Settlement shall be determined in accordance with the
5 formula set forth in Subsection 4.2.

6 6.3 Defendant will provide the Claims Administrator with sufficient funds via wire transfer to
7 pay the Class Settlement Amount within fourteen (14) calendar days of the Final Effective
8 Date. No later than seven (7) calendar days after Defendant provides the Claims
9 Administrator with sufficient funds via wire transfer to pay the Class Settlement Amount,
10 the Claims Administrator shall disburse the Settlement Disbursement Payments, as
11 specified in this Agreement and approved by the Court.

12 6.4 Three (3) calendar days before the Settlement Disbursement Payment, Class Counsel shall
13 deliver to the Claims Administrator written instructions signed by Class Counsel that
14 describe the manner and mode of payment of such attorneys' fees and costs (and, in the
15 absence of such instructions, such attorneys' fees and costs shall be sent by U.S. Mail), and
16 a fully-executed Form W-9 with respect to each entity to whom the attorney's fees and
17 costs shall be paid. The Claims Administrator will issue to Class Counsel an IRS Form
18 1099 for such amounts paid for attorneys' fees under this Settlement.

19 6.5 No person shall have any claim against Defendant, Defense Counsel, Plaintiff, Class
20 Counsel, or the Settlement Administrator based on mailings, distributions, payments or
21 reports made in accordance with or pursuant to this Agreement. This provision does not,
22 however, prevent a Party from seeking enforcement of this Agreement.

23 6.6 Without prejudice to any other remedies, the Settlement Administrator shall agree to be
24 responsible for any breach of its obligations (whether committed by the Settlement
25 Administrator or its agents) and to indemnify and hold the Parties and their counsel
26 harmless from and against all liabilities, claims, causes of action, costs and expenses
27 (including legal fees and expenses) arising out of any breach committed by the Settlement
28 Administrator or its agents

6.7 Opt-Out Letters.

6.7.1 A Class Member who wishes to opt-out from this Settlement, and from the release of claims pursuant to this Settlement, shall submit a signed, written “Opt-Out Letter” directly to the Claims Administrator. The Opt-Out Letter must include the Settlement Class Member’s full legal name, home address, telephone number, and last four digits of their social security number (*for identity verification purposes*) and must state in substance: “I have read the Notice and I wish to opt out of the Settlement reached in the Hart case against ALIKA LLC (Case No. 37-2021-00025651-CU-OE-CTL). I understand that by opting out of the Settlement I will not be bound by any judgment in the case and will not be entitled to receive any payment from the Settlement.” Opt-Out Letters must also include a statement that that he/she has received the Notice and that he/she understands that he/she is still bound by the release of the PAGA claims upon final approval of the Settlement, and a signature under penalty of perjury of the Settlement Class Member requesting exclusion. The Opt-Out Letter must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Opt-Out Letter will be timely only if postmarked by the Claims Deadline unless the Parties otherwise agree in writing. A Opt-Out Letter may not be submitted on behalf of a group. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal, or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment, except as to the release of PAGA claims herein. The Parties to this Agreement and their counsel agree that they will not solicit or encourage Class Members to opt-out or to object to this Settlement Agreement. Upon request, the Claims Administrator shall promptly send a copy/scan of any Opt-Out Letter (including a copy/scan of the mailing envelope) to Class Counsel and Defense

Counsel. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be postmarked by the Claims Deadline.

6.7.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to recover a share of the Net Settlement Amount. Further, a Settlement Class Member who submits an Opt-Out Letter shall have no standing to object to the Settlement, or to appear at the Final Approval Hearing.

6.7.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Class Counsel and Defense Counsel promptly upon request. The Claims Administrator shall retain the originals of all Opt-Out Letters (including the envelopes with the postmarks) received and shall make copies or the originals available to Class Counsel or Defendant's Counsel upon request.

6.7.4 All members of the Settlement Class who are not included in the exclusion list approved by the Court shall be bound by this Settlement, and all their claims shall released as provided for herein, even if they never received actual notice of the Action or this proposed Settlement. Notwithstanding the submission of a timely Opt-Out Letter, Class Members will still be bound by the settlement and release of the PAGA claims or remedies under the Final Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Opt-Out Letters do not apply to the PAGA claims.

6.7.5 Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (i) be deemed to be Releasing Class Members for all purposes under this Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

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1 6.8 Objection to Settlement. A Settlement Class Member who has not opted-out of the
2 Settlement who wishes to object to the Settlement must notify the Claims Administrator of
3 their objection, in writing, on or before the Claims Deadline. The right to object to the
4 proposed Settlement must be exercised individually by a Class Member or through counsel,
5 and not as a member of a group, subgroup, class, or subclass. The objection must state the
6 Settlement Class Member's: (i) full legal name, home address, telephone number, last four
7 digits of their social security number (*for identity verification purposes*); (ii) the words
8 "Notice of Objection" or "Formal Objection"; (iii) in clear and concise terms the legal and
9 factual arguments supporting the objection; (iv) a list identifying the witness(es) the
10 objector may call to testify at the Final Approval Hearing; and (v) true and correct copies
11 of any exhibit(s) the objector intends to offer at the Final Approval Hearing. If any
12 Objecting Class Member wishes to speak at the Final Approval Hearing, that Objecting
13 Class Member's written submission must include a request to be heard, and the Court will
14 determine whether Objecting Class Members will be permitted to speak. Any Settlement
15 Class Member who fails to make an objection at the Final Approval Hearing shall be
16 deemed to have waived his or her right to object to the Settlement. Any Settlement Class
17 Member whose objection is overruled will be deemed to be subject to the terms of this
18 Settlement and the Court's Order of Final Approval. Any Class Member who "opts-out"
19 of the Settlement shall not have standing to "object" to the Settlement, or to appear at the
20 Final Approval hearing. The Settlement Administrator shall provide objections, if any, to
21 Class Counsel and Defense Counsel within three (3) days of receipt, and the Settlement
22 Administrator shall attach the same to its declaration of due diligence that will be filed with
23 the Court prior to the Final Approval Hearing. Any Class Member who files an objection
24 remains eligible to receive monetary compensation from the Settlement. Plaintiff and
25 Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class
26 Member and/or his or her counsel related to any objections to the Settlement. Submitting
27 an objection does not preserve the right to appeal a final judgment. Rather, the right to
28 appeal is preserved by becoming a party of record by timely and properly intervening or

1 filing a motion to vacate the judgment under Code of Civil Procedure § 663. Any
2 Settlement Class Member who does not timely and properly become a party of record by
3 intervening or filing a motion to vacate the judgment waives any and all rights to appeal
4 from the Judgment, including all rights to any post-judgment proceeding and appellate
5 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
6 California Code of Civil Procedure section 473, and extraordinary writs. Counsel for the
7 Parties may file a response to any objections submitted by Objecting Class Members at
8 least five (5) court days before the date of the Final Approval Hearing.

9 6.9 All Class Members who do not timely request exclusion from the Settlement will
10 automatically receive payment under this Settlement as described above in Subsection 4.2,
11 which will be in the form of a Settlement Payment check and shall be bound by the release
12 set forth in section 7 and all other pertinent terms of the Settlement.

13 6.10 Disputes Regarding Class Data. Class Members are deemed to participate in the
14 Settlement, unless they opt-out. The Notice will inform Class Members of his/her
15 estimated individual settlement amount and the number of Weeks Worked during the Class
16 Period. Class Members may dispute their Weeks Worked if they feel they were employed
17 more workweeks in the Class Period in California than Defendant's records show by timely
18 submitting evidence to the Settlement Administrator. Defendant's records will be
19 presumed determinative absent reliable evidence to rebut Defendant's records, but the
20 Settlement Administrator will evaluate the evidence submitted by the Class Member and
21 provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet
22 and confer in good faith about the evidence to determine the Class Member's actual number
23 of Weeks Worked and estimated individual settlement amount. If Class Counsel and
24 Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement
25 Administrator to render a final decision. Class Members will have until the Claims
26 Deadline to dispute Weeks Worked, unless extended by the Court. In the event that the
27 Settlement Administrator increases the number of Weeks Worked for any Settlement Class
28 Member, then the Settlement Administrator will recalculate all individual settlement

amounts; accordingly, in no event will Defendant be required to increase the Class Settlement Amount.

6.11 In the event that Final Approval of this Settlement Agreement is not granted by the Court, neither the Settlement Agreement, nor any documents related to this Settlement or negotiations leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the right to challenge all claims and allegations in the Litigation, including but not limited to challenging class certification for any purpose other than settlement, and to assert all applicable defenses.

6.12 Should the Court decline to approve this Agreement in any material respect (except for approval of the award of Class Counsel's Attorneys' Fees and Costs or the class representative Service Enhancement, or the amount allocated to PAGA), Defendant shall have no obligation to make any payment under this Agreement, and in the event that Defendant has made any such payment, such monies shall be returned promptly by the Claims Administrator to Defendant (minus Defendant's one-half share of any Administration Costs already reasonably incurred by the Claims Administrator; the other one-half share of any Administration Costs to be paid by Class Counsel).

7. **COMPREHENSIVE WAIVER AND RELEASE**

7.1 Subject to final approval by the Court of the Settlement and upon the Settlement Effective Date, Named Plaintiff and Settlement Class Members (collectively, "*Releasing Settlement Class Members*"), will each be deemed to have, and by operation of the Order of Final Approval will have, expressly and irrevocably released, acquitted, and forever discharged Defendant, its members, shareholders, officers, directors, agents, current and former employees, partners, attorneys, insurers, ERISA plan administrators, subsidiaries, affiliates, and their respective predecessors, successors, and assigns (collectively referred to as the "Released Parties") from any and all claims, rights, demands, damages, debts, accounts, duties, costs including attorneys' fees (other than those costs and fees required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, liabilities, penalties, interest, or causes of action arising between June

1 11, 2017 and August 31, 2022, and that were alleged in the operative FAC in the matter of
2 *Destinee Hart v. Alika LLC dba Carlton Oaks Golf Club* (Case No. 37-2021-00025651-
3 CU-OE-CTL), or that could have been alleged or otherwise raised based on the factual
4 allegations pled in the operative pleading in the Lawsuit, including claims that have been
5 or could have been pled as wage and hour violations under California law based on the
6 factual allegations set forth in the operative pleading in the Lawsuit, including without
7 limitation: (i) any and all claims involving any alleged failure to pay minimum, straight-
8 time and/or overtime wages for work performed or at the lawful rate of pay; (ii) any and
9 all claims involving any alleged failure to authorize and permit legally compliant rest
10 periods, or to pay premiums for non-compliant rest periods, or to pay such premiums at the
11 regular rate of compensation; (iii) any alleged claims involving any alleged failure to
12 provide legally compliant meal breaks, or to pay premiums for non-compliant meal
13 periods, or to pay such premiums at the regular rate of compensation; (iv) any and all claims
14 involving any alleged failure to pay all owed wages each and every pay period; (v) any and
15 all claims involving any allegation that Defendant allowed or required employees to bear
16 any of the costs associated with the operation of Defendant's business, including but not
17 limited to any claims arising under California Labor Code §§ 2800 and 2802; (vi) any and
18 all claims involving any alleged failure to timely pay wages, including but not limited to
19 any claim that Defendant violated California Labor Code §§ 201 or 202, and any claim for
20 waiting time penalties under California Labor Code § 203; (vii) any and all claims
21 involving any alleged failure to keep accurate records or to issue proper wage statements
22 to employees, including but not limited to any claim that Defendant's wage statements do
23 not comply with California Labor Code § 226; (viii) any and all claims for failure to comply
24 with the Unfair Competition Law (Business and Professions Code § 17200 *et seq.*); (ix)
25 any and all penalties pursuant to the Private Attorneys General Act ("PAGA"), California
26 Labor Code § 2699 *et seq.* arising out of any or all of the aforementioned claims, facts or
27 allegations; and (x) all damages, penalties, interest, costs (including attorneys' fees) and
28 other amounts recoverable under said claims or causes of action as to the facts and/or legal

1 theories alleged or which could have been pled as wage and hour violations under
2 California law based on the factual allegations set forth in the operative Complaint
3 (collectively, the “Released Claims”). This Release also covers all claims for interest,
4 attorneys’ fees and costs related to the Class Action and all claims for failure to timely pay
5 final wages to all separated Class Members who are members of the LC 203 Subclass. The
6 Releasing Settlement Class Members will be deemed to have specifically acknowledged
7 that this Release reflects a compromise of disputed claims.

8 7.1.1 With regard to the Released Claims, the Releasing Settlement Class Members also
9 waive and release all claims for attorneys’ fees and costs incurred by Releasing
10 Settlement Class Members or by Class Counsel in connection with the Litigation
11 and the Settlement of the Litigation.

12 7.1.2 Each Releasing Settlement Class Member will be deemed to have made the
13 foregoing Release as if by manually signing it.

14 7.1.3 Named Plaintiff Destinee Hart, on behalf of herself and the Releasing Settlement
15 Class Members, acknowledge and agree that the claims for unpaid wages in the
16 Action, and untimely payment of wages in the Action, are disputed, and that the
17 payments set forth herein constitute payment of all sums allegedly due. Named
18 Plaintiff Destinee Hart, on behalf of herself and the Settlement Class, acknowledges
19 and agrees that California Labor Code Section 206.5 is not applicable to the Parties
20 hereto. Section 206.5 provides in pertinent part as follows:

21 An employer shall not require the execution of any release of any claim or right on
22 account of wages due, or to become due, or made as an advance on wages to be
23 earned, unless payment of those wages has been made.

24 7.1.4 Plaintiff and Defendant intend that the Settlement described in this Agreement will
25 release and preclude any further claim, whether by lawsuit, administrative claim or
26 action, arbitration, demand, or other action of any kind, by each and all of the
27 Releasing Class Members to obtain a recovery based on, arising out of, and/or
28 related to any and all of the Released Claims. This paragraph does not apply to any

1 Class Member who timely and validly opts out of the Settlement.

2 7.1.1.1. In addition to Named Plaintiff's release of the Released Claims, as a
3 material term of this Agreement, Named Plaintiff Destinee Hart in her
4 individual capacity and with respect to her individual claims only, hereby
5 agrees to release the Released Parties from all claims, demands, rights,
6 liabilities and causes of action of any and every nature and description
7 whatsoever, known or unknown, suspected or unsuspected, asserted or
8 that might have been asserted, whether in tort, contract, or for violation of
9 any state or federal statute, rule or regulation arising out of, relating to, or
10 in connection with any act or omission by or on the part of any of the
11 Released Parties committed or omitted prior to the execution hereof,
12 including a waiver of California Civil Code § 1542.

13 This General Release includes any unknown claims that Named
14 Plaintiff Destinee Hart does not know or suspect to exist in her favor at
15 the time of the General Release, which, if known by her, might have
16 affected her Settlement with, and release of, the Released Parties or might
17 have affected her decision not to object to this Settlement or the General
18 Release.

19 With respect to the General Release, Named Plaintiff Destinee Hart
20 stipulates and agrees that, upon the execution of this Agreement, she shall
21 be deemed to have, and by operation of the Final Judgment shall have,
22 expressly waived and relinquished, to the fullest extent permitted by law,
23 the provisions, rights and benefits of Section 1542 of the California Civil
24 Code, or any other similar provision under state or federal law as to the
25 generally released claims. Named Plaintiff Destinee Hart acknowledges,
26 understands and agrees that this Settlement is binding notwithstanding
27 any facts of which she may later become aware, any change in the law
28 that might have affected her decision to enter into this Settlement or any

1 discovery that the facts or the law relative to the matters released herein
2 are different from what were understood at the time of signing this
3 Settlement. Section 1542 provides as follows:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
5 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW**
6 **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**
7 **OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY**
8 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS**
9 **OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
10 **PARTY.**

11 Notwithstanding the provisions of Section 1542, and for the purpose of
12 implementing a full and complete release and discharge of all parties,
13 Named Plaintiff Destinee Hart and Class Counsel expressly acknowledge
14 that this Settlement Agreement is intended to include in its effect, without
15 limitation, all claims that Class Representative knew of, as well as all
16 claims that she does not know or suspect to exist in her favor against the
17 Released Parties, or any of them, for the time period from the beginning
18 of time to the execution of this Settlement Agreement, and that this
19 Settlement Agreement contemplates the extinguishment of any such Class
20 Representative's claims.

21 **8. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

22 8.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of
23 an order granting Preliminary Approval of the Settlement substantially in the following
24 form:

25 8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed
26 Settlement should be finally approved as fair, reasonable, and adequate as to the
27 proposed Settlement Class;

28 8.1.2 Approving as to form and content the proposed Class "Notice;"

1 8.1.3 Directing the mailing of the Notice by first class mail, in English and Spanish, to
2 the Settlement Class Members;

3 8.1.4 Preliminarily approving the Settlement; and

4 8.1.5 Approving Dychter Law Offices, APC as Class Counsel, approving Ms. Destinee
5 Hart as Settlement Class Representative, and approving Atticus Administration,
6 LLC as the Claims Administrator.

7 8.2 Defendant and their counsel shall cooperate with Class Counsel as necessary to obtain
8 Preliminary Approval and Final Approval of this Settlement.

9 8.3 In addition, concurrent with applying to the Court for the entry of an order granting
10 Preliminary Approval of the Settlement, Class Counsel shall take all necessary steps to
11 inform the LWDA of the Settlement Agreement in accordance with Labor Code section
12 2699(1)(2).

13 9. **DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT**
14 **APPROVAL**

15 9.1 Following Preliminary Approval by the Court of the Settlement, Class Counsel will submit
16 a proposed Final Judgment. The proposed Final Judgment shall:

17 9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and
18 adequate and directing consummation of its terms and provisions;

19 9.1.2 Approve an award of attorneys' fees and reimbursement of costs to Class Counsel;

20 9.1.3 Approve any Service Enhancement to the Settlement Class Representative;

21 9.1.4 Certify the Settlement Class for settlement purposes only in accordance with
22 Section 3 of this Agreement; and,

23 9.1.5 Permanently bar the Settlement Class Representative and all Releasing Settlement
24 Class Members from further prosecuting any of the Released Claims against
25 Defendant. Named Plaintiff Destinee Hart shall have been deemed to have
26 executed a full and final release, pursuant to Civil Code Section 1542, and shall not
27 be permitted to submit an opt-out or objection to the Settlement.

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1 9.2 Defendant and their Counsel shall cooperate with Class Counsel as necessary to obtain
2 Final Approval and the Court's final judgment.

3 9.3 Within ten (10) calendar days after either (1) Final Approval, if the Settlement is approved
4 or (2) entry of order denying the Settlement, if the Court does not approve the Settlement,
5 Plaintiff's Counsel will provide a copy of the Court's judgment or order to the LWDA
6 pursuant to Labor Code Section 2699(1)(3).

7 **10. MUTUAL FULL COOPERATION**

8 10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this
9 Settlement, including but not limited to, execution of all necessary documents and to take
10 such other action as may reasonably be necessary to implement the terms of this Settlement.
11 The Parties shall use their best efforts, including all efforts contemplated by this Agreement
12 and any other efforts that may become necessary by order of the Court, or otherwise, to
13 effectuate the terms of this Settlement. As soon as practicable after execution of this
14 Agreement Class Counsel shall, with the assistance and cooperation of Defendant and their
15 counsel, take all necessary steps to secure the Court's Final Judgment.

16 10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the
17 deadline set forth herein applicable to that obligation, that Party may apply to the Court for
18 a reasonable extension of time to fulfill that obligation. Consent to such a request for an
19 extension will not be unreasonably withheld by the other Party.

20 **11. STATEMENT OF NO ADMISSION**

21 11.1 Nothing contained in this Agreement shall be construed or deemed an admission of
22 liability, culpability, or wrongdoing on the part of Defendant and Defendant denies liability
23 therefor. Nor shall this Agreement constitute an admission by Defendant as to any
24 interpretation of laws or as to the merits, validity, or accuracy of any claims made against
25 it in the Litigation or the propriety of class certification for any purpose other than
26 settlement. Likewise, nothing in this Agreement shall be construed or deemed an
27 admission with regards to the validity of any of Defendant's defenses or affirmative
28 defenses. Each of the Parties has entered into this Settlement with the intention to avoid

1 further disputes and litigation with the attendant inconvenience and expenses.

2 11.2 This Agreement, and all related documents, and all other actions taken in implementation
3 of the Settlement, including any statements, discussions, or communications, and any
4 materials prepared, exchanged, issued, or used during the course of the negotiations leading
5 to this Agreement are settlement documents and shall be inadmissible in evidence and shall
6 not be used for any purpose in any judicial, arbitral, administrative, investigative, or other
7 court, tribunal, forum, or proceeding, including any wage and hour or other litigation
8 against Defendant, for any purpose, except in an action or proceeding to approve, interpret,
9 or enforce the terms of this Agreement, and except as required by Court Order.

10 11.3 The Notice, Opt-Out Letters, and any other evidence produced or created by any Settlement
11 Class Member in connection with the claims procedures pursuant to this Settlement, and
12 any actions taken by Defendant in response to such Opt-Out Letters, the calculations by
13 the Claims Administrator, or other evidence, do not constitute, are not intended to
14 constitute, and will not be deemed to constitute an admission by Defendant of any violation
15 of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or
16 any obligation or duty at law or in equity.

17 11.4 In the event that this Agreement is not approved by the Court, any appellate court, or
18 otherwise fails to become effective and enforceable, or is terminated, Defendant will not
19 be deemed to have waived, limited, or affected in any way any of its objections or defenses
20 in the Litigation.

21 **12. VOIDING THE AGREEMENT**

22 12.1 In the event that this Settlement is not approved, or if for any reason the Settlement
23 Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable
24 and shall not be used nor shall it be admissible in any subsequent proceedings either in this
25 Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal,
26 forum, or other proceeding, including without limitation any wage and hour, or other
27 litigation against Defendant. In any such event, all orders entered in connection with the
28 Settlement, including the certification of the Settlement Class, shall be vacated without

1 prejudice to any Party's position on the issue of class certification, or any other issue, in
2 this Action or any other action, and the Parties shall be restored to their litigation positions
3 existing on the date of execution of this Settlement; and all matters covered by this
4 Settlement and the releases contained herein shall be null and void. In such event, nothing
5 in this Settlement or any draft thereof, or of the discussion, negotiation, documentation, or
6 other part or aspect of the Parties' settlement discussions leading to the execution of this
7 Settlement shall have any effect, nor shall any such matter be admissible in evidence for
8 any purpose in the Action or in any other proceeding or forum nor shall any such matter be
9 used or construed by or against any Party as a determination, admission, or concession of
10 any issue of law or fact in this or any other litigation or proceeding, and the Parties do not
11 waive, and instead expressly reserve, their respective rights with respect to the prosecution
12 and defense of the Action as if this Settlement never existed. Except for purposes of this
13 settlement, Defendant expressly reserves all rights to contest all class action allegations at
14 any time and in any proceeding or forum.

15 12.2 If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no
16 further obligations under the Settlement, including any obligation by Defendant to pay the
17 Class Settlement Amount, or any amounts that otherwise would have been owed under
18 this Settlement. However, if the Settlement is voided or fails for any reason, any costs
19 incurred by the Settlement Administrator shall be borne by Defendant.

20 12.3 In the event that Defendant has already provided funds to the Settlement Administrator in
21 accordance with this Settlement Agreement, and (i) the Settlement is not approved, is
22 overturned, or is materially modified by the Court or on appeal, (ii) the Judgment does not
23 become Final, or (iii) this Settlement is terminated, cancelled, or fails to become effective
24 for any reason, then within five (5) business days after written notice is provided by
25 Defendant's counsel to the Settlement Administrator, all funds provided pursuant to this
26 Settlement, less any Settlement Administration Costs already incurred but not yet paid,
27 shall be returned to Defendant.
28

12.4 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

12.5 If five percent (5%) or more of the Class Members submit valid and timely Opt-Out Letters, then Defendant, at their sole option, may withdraw from this Settlement by giving notice to Class Counsel and the Claims Administrator within three (3) business days of receipt by Defendant's Counsel of the final report of the number of opt-outs from the Claims Administrator after the Opt-Out Submission Deadline. If Defendant exercises such option, they will be solely responsible for all settlement administration costs incurred. Defendant shall not be responsible for paying any of the Attorneys' Fees and Costs set forth in this Settlement, or any other fees and/or costs incurred by Class Counsel to effectuate this Settlement. Defendant's termination of this Settlement shall have the same effect as would non-approval of the Settlement by the Court: the Parties shall revert to their previous positions, with all parties to this Settlement to stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court.

13. PARTIES' AUTHORITY

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

14. NO PRIOR ASSIGNMENTS

14.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

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15. **NOTICES**

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if sent by overnight delivery services such as Federal Express or similar courier; or (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

15.1.1 **To the Class:**

Alexander I. Dychter, Esq.
Dychter Law Offices, APC
180 Broadway, Suite 1835
San Diego, CA 92101-5064
Telephone: (619) 487-0777
Facsimile: (619) 330-1827
E-Mail: Alex@DychterLaw.com

15.1.2 **To Defendant:**

Terence L. Greene, Esq.
Ross M. Poole, Esq.
DELMORE GREENE LLP
600 West Broadway, Suite 400
San Diego, California 92101-3352
Telephone: (619) 515-1194
Facsimile: (619) 515-1197
E-Mail: tgreene@DelmoreGreene.com
E-Mail: rpoole@DelmoreGreene.com

16. **CONFIDENTIALITY**

16.1 Named Plaintiff and Class Counsel agree that prior to the filing of the Motion for Preliminary Approval, they will keep the terms of this Settlement confidential except for purposes of communicating with Defendant, the Court, or a prospective Settlement Administrator. Except as set forth in Paragraph 16.2 below, any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

16.2 Plaintiff and Class Counsel agree not to issue a press release, or post on a website or any form of social media, or to advertise the terms of the settlement with Defendant. Plaintiff and Class Counsel further agree that if contacted by the press regarding this case, they will only state that the lawsuit exists and has been resolved.

17. **MISCELLANEOUS PROVISIONS**

17.1 Interim Stay of Proceedings. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Litigation except such as are necessary to effectuate the Settlement, including amending the operative complaint.

17.2 Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

17.3 Res Judicata. The Released Parties shall have the right to file this Settlement, the Final Approval Order and Judgment, and any other documents or evidence relating to the Settlement in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17.4 Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agrees to seek the help of the mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

17.5 Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this

Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Agreement.

17.6 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision. Each term of this Agreement is contractual and not merely a recital.

17.7 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

17.8 Integration Clause. This Agreement and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

17.9 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

17.10 Class Counsel and Settlement Class Representative Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice will provide all Settlement Class Members with a summary of the Settlement and will advise all Settlement Class Members of the binding nature of the release. The Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

1 17.11 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile
2 signature, *pdf* signature, or signature in compliance with the Uniform Electronic
3 Transaction Act, and in any number of counterparts, and when each party has signed and
4 delivered at least one such counterpart, each counterpart shall be deemed an original, and,
5 when taken together with other signed counterparts, shall constitute one and the same
6 Agreement, which shall be binding upon and effective as to all Parties.

7 17.12 Applicable Law. This Agreement shall be governed by California law without regard to
8 its choice of law or conflicts of law principles or provisions.

9 17.13 Enforcement of the Settlement Agreement. In the event that one or more of the Parties to
10 this Settlement Agreement institutes any legal action, arbitration, or other proceeding
11 against any other party or Parties to enforce the provisions of this Settlement Agreement
12 or to declare rights and/or obligations under this Settlement Agreement, the successful
13 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties
14 reasonable attorneys' fees and costs, including expert witness fees incurred in connection
15 with any enforcement actions.


16 17.14 Retention of Jurisdiction by the Court. Following approval of the Settlement and the
17 Court's entry of the Order of Final Approval, the Court shall retain jurisdiction for the
18 purpose of addressing any issues which may arise with respect to the administration of the
19 Settlement or the enforcement of the Settlement's terms pursuant to California Code of
20 Civil Procedure section 664.6.

21 *[Signature Pages Follow]*
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1 **IT IS SO STIPULATED:**

Individually and on behalf of the Class


2
3 Dated: Oct 28, 2022


Destinee Hart (Oct 28, 2022 13:23 PDT)

Destinee Hart

4
5
6 Dated: November 07, 2022

**Defendant ALIKA LLC dba
Carlton Oaks Golf Club**


7
8 By: 
John Chen
President

9
10
11 **APPROVED AS TO FORM AND CONTENT ONLY:**

12 **On Behalf of Plaintiff and the Class**

13 Dated: October 20, 2022


DYCHTER LAW OFFICES, APC

14
15 By: 
Alexander I. Dychter, Esq.

16
17 **On Behalf of Defendant**

18 Dated: November 7, 2022

DELMORE GREENE LLP

19
20 By: 
Ross M. Poole, Esq.
Counsel for Defendant ALIKA LLC dba
Carlton Oaks Golf Club